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on June 4, 2009

PATENT
Attorney Docket No.: 021756-016000US
Client Reference No.: OID-2005-243-01

TOWNSEND and TOWNSEND and CREW LLP

By: /Su Jien Steele/
Su Jien Steele

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Mary A. Holstege

Application No.: 09/848,987

Filed: May 3, 2001

For: System and Method for Monitoring
Multiple Online Resources in Different
Formats

Customer No.: 51206

Confirmation No. 8754

Examiner: Asad M. Nawaz

Technology Center/Art Unit: 2155

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
DETERMINATION

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 1.705(b), Applicants respectfully request reconsideration of the Patent Term Adjustment determination for this case. This request is in response to the decision on the "Request for Reconsideration of Patent Term Adjustment Determination" filed on January 2, 2009, which was held in abeyance until after the actual patent date. A copy of the decision has been submitted with this request (*See* Exhibit B, attached hereto). The patent issued on June 2, 2009. Accordingly, Applicants respectfully submit that this request for reconsideration is timely filed. A statement of facts as required under 37 C.F.R. § 1.705(b)(2) is provided below.

STATEMENT OF FACTS

Correct Patent Term Adjustment and Bases Under § 1.702, 1.703, and 1.704 for the Adjustment

The correct patent term adjustment is **994** days, not 688 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on May 13, 2009.

The period of adjustment under 37 C.F.R. § 1.702(a) is 852 days (“A delay”).

The period of adjustment under 37 C.F.R. § 1.702(b) is to be determined when the instant application issues. The period of adjustment as of the mailing date of the Notice of Allowance under 37 C.F.R. § 1.702(b) is 473 days (“B delay”).

The period of overlapping days over the period of adjustments under 37 C.F.R. §§ 1.703(a)-(e) is 136 days.

The period adjustment under 37 C.F.R. § 1.704(a) is 195 days (“applicant delay”).

**The relevant dates as specified in 37 C.F.R. §§ 1.703(a)-(e) &
the adjustment specified in 37 C.F.R. § 1.703(f)**

1. § 1.703(a)

Applicants are in agreement with the USPTO determination of a period of adjustment of 852 days (“A delay”) under 37 C.F.R. § 1.703(a). (See Exhibit A, attached hereto).

Applicants respectfully request an additional period of adjustment equal to the number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid, January 2, 2009, and all outstanding requirements were satisfied and ending on the date the patent was issued. See 37 C.F.R. § 1.703(a)(6).

2. § 1.703(b)

The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, May 4, 2004, and ends on the day the patent is issued.

The period of adjustment does not include the period beginning on the date on which an RCE was filed, August 19, 2005. *See* 37 C.F.R. § 1.703(b)(1).

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is 393 days (“B delay”), *i.e.*, from May 4, 2004 to August 19, 2005.

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e).

4. Calculation of Overlapping Days under § 1.703(f)

There are 136 days in the overlapping periods under §§ 1.703(a)-(e). The overlapping period is from May 4, 2003 to September 16, 2004.

Applicants request that overlapping periods be determined in accordance with *Wyeth v. Dudas* (Case No. 07-1492, D.D.C. 2008). The periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days.

As discussed above, Applicants respectfully request an additional period of adjustment equal to the number of days, if any, under 37 C.F.R. § 1.703(a)(6). Any such period of adjustment under 37 C.F.R. § 1.703(a)(6) begins on December 30, 2008 will not overlap with a period of adjustment under 37 C.F.R. § 1.702(b) which does not include the period beginning on May 4, 2004.

Reduction of period of adjustment of patent term under 37 C.F.R. §1.704

Applicants are in agreement with the U.S. Patent and Trademark Office determination of an adjustment of 195 days “applicant delay”) under 37 C.F.R. § 10704(a)

Patent Term Adjustment Determination

Applicants are entitled to 994 days of patent term adjustment, *i.e.*,
[A delay (852 days) + B delay (473 days) minus overlap (136 days)] minus [195 days (applicant delay) under 37 C.F.R. § 1.703(f). Applicants are also entitled to any period of adjustment under 37 C.F.R. § 1.703(a)(6).

Terminal disclaimer

No terminal disclaimer has been filed.

The fee set forth in 37 C.F.R. §1.18(e) (\$200.00) was paid on January 2, 2009.
Applicants do not believe that any additional fees are due at this time. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,



Jeffrey S. King
Reg. No. 58,791

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Attachments: Exhibit A (3 pages),
Exhibit B (2 pages)

Exhibit A

09/848,987	SYSTEM AND METHOD FOR MONITORING MULTIPLE ONLINE RESOURCES IN DIFFERENT FORMATS	12-22- 2008::17:10:30
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/848,987

Filing or 371(c) Date:	05-03-2001	USPTO Delay (PTO) Delay (days):	852
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	195
Post-Issue Petitions (days):	+0	Total PTA (days):	657
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
10-24-2008	Mail Notice of Allowance	11	
09-16-2008	Document Verification	⌘	
09-16-2008	Notice of Allowance Data Verification Completed	⌘	
09-16-2008	Case Docketed to Examiner in GAU	⌘	
09-15-2008	Examiner's Amendment Communication	⌘	
09-09-2008	Examiner Interview Summary Record (PTOL - 413)	⌘	
07-16-2008	Date Forwarded to Examiner	⌘	
06-13-2008	Response after Non-Final Action		92
06-13-2008	Request for Extension of Time - Granted		⌘
12-13-2007	Mail Non-Final Rejection		⌘
12-10-2007	Non-Final Rejection		
10-18-2007	Date Forwarded to Examiner		
10-18-2007	Date Forwarded to Examiner		
10-10-2007	Request for Continued Examination (RCE)		
10-18-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
10-10-2007	Workflow - Request for RCE - Begin		
09-04-2007	Miscellaneous Incoming Letter		
07-26-2007	PG-Pub Issue Notification		
07-17-2007	Mail Final Rejection (PTOL - 326)		
07-09-2007	Final Rejection		
05-04-2007	Date Forwarded to Examiner		
04-30-2007	Response after Non-Final Action		1
04-17-2007	Rescind Nonpublication Request for Pre Grant Publication		⌘
01-29-2007	Mail Non-Final Rejection		⌘
01-22-2007	Non-Final Rejection		
11-13-2006	Date Forwarded to Examiner		
11-13-2006	Date Forwarded to Examiner		
10-26-2006	Request for Continued Examination (RCE)		
11-13-2006	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
10-26-2006	Workflow - Request for RCE - Begin		

10-05-2006	Mail Advisory Action (PTOL - 303)		
10-02-2006	Advisory Action (PTOL-303)		
09-29-2006	Date Forwarded to Examiner		
09-25-2006	Amendment after Final Rejection		
07-26-2006	Mail Final Rejection (PTOL - 326)		
07-24-2006	Final Rejection		
05-19-2006	Date Forwarded to Examiner		
05-05-2006	Response after Non-Final Action		98
04-13-2006	Mail Notice of Informal or Non-Responsive Amendment	⚡	
02-04-2006	Date Forwarded to Examiner	⚡	
01-27-2006	Informal or Non-Responsive Amendment after Examiner Action	⚡	
01-27-2006	Response after Non-Final Action	⚡	
12-02-2005	Correspondence Address Change		
12-02-2005	Change in Power of Attorney (May Include Associate POA)		
10-28-2005	Mail Non-Final Rejection		
10-27-2005	Non-Final Rejection		
08-24-2005	Date Forwarded to Examiner		
08-24-2005	Date Forwarded to Examiner		
08-19-2005	Request for Continued Examination (RCE)		
08-24-2005	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
08-19-2005	Workflow - Request for RCE - Begin		
08-02-2005	Mail Examiner Interview Summary (PTOL - 413)		
07-27-2005	Examiner Interview Summary Record (PTOL - 413)		
05-25-2005	Mail Final Rejection (PTOL - 326)	35	
05-24-2005	Final Rejection	⚡	
03-18-2005	Date Forwarded to Examiner	⚡	
12-20-2004	Response after Non-Final Action		4
03-15-2005	Correspondence Address Change	⚡	
12-20-2004	Workflow incoming amendment IFW	⚡	
09-16-2004	Mail Non-Final Rejection	806	
09-16-2004	Non-Final Rejection	⚡	
07-26-2004	Case Docketed to Examiner in GAU	⚡	
05-25-2004	IFW TSS Processing by Tech Center Complete	⚡	
07-21-2003	Case Docketed to Examiner in GAU	⚡	
03-28-2002	Correspondence Address Change	⚡	
05-03-2001	Information Disclosure Statement (IDS) Filed	⚡	
05-03-2001	Information Disclosure Statement (IDS) Filed	⚡	
07-28-2001	Case Docketed to Examiner in GAU	⚡	
06-30-2001	Application Dispatched from OIPE	⚡	
06-29-2001	Correspondence Address Change	⚡	

05-12-2001	IFW Scan & PACR Auto Security Review	✂
05-03-2001	Initial Exam Team nn	✂

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Exhibit B

Commissioner of Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

TOWNSEND AND TOWNSEND AND
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COPY MAILED

APR 22 2009

OFFICE OF PETITIONS

In re Application of	:	
Mary A. Holstege	:	
Application No. 09/848,987	:	ON APPLICATION FOR
Filed: May 3, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
021756-016000US6	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION filed on January 2, 2009. Applicant requests that the determination of patent term adjustment be increased by the number of days in excess of three (3) after the date the application was filed. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Applicant is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for

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seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

Applicant states that the application is not subject to a terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Patents Attorney
Office of Petitions